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09/778,375	02/07/2001	Mattias Schmidt	8414Q	6856

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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 10/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/778,375

Applicant(s)

SCHMIDT ET AL.

Examiner

Michele Kidwell

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6-11 and 14-16 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 15 July 2003 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

The drawings were received on July 15, 2003. These drawings are not acceptable.

The proposed drawing correction has been disapproved because it is not in the form of a pen-and-ink sketch showing changes in red ink or with the changes otherwise highlighted. See MPEP § 608.02(v).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1 – 2, 6, 8 – 11 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Glaug et al. (US 5,797,892).

With respect to claim 1, Glaug et al. (hereinafter "Glaug") discloses an absorbent article comprising a liquid impermeable backsheet (58), a liquid pervious topsheet joined to the backsheet, an absorbent core disposed intermediate to the topsheet and the backsheet, and a phase change material disposed at least on a portion of the article as set forth on page 5, lines 29 – 32 and in figure 2.

As to claim 2, Glaug discloses an absorbent article wherein the phase change material changes phases in response to a change between the backsheet of the article and the skin of the wearer in relative humidity, moisture or temperature as set forth in col. 8, lines 44 – 57.

With reference to claim 6, Glaug discloses an absorbent article wherein the phase change material effects relative humidity or temperature within the article or between the article and the wearer as set forth in col. 9, lines 3 – 5.

As to claim 8, Glaug discloses an absorbent article wherein the phase change material has a latent heat energy of at least about 200 kJ/kg as set forth in col. 9, lines 29 – 34.

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Regarding claim 9, Glaug discloses an absorbent article wherein the phase change material is used at a basis weight of at least about 100 gsm as set forth in col. 9, lines 34 – 37.

With respect to claims 10 and 11, Glaug discloses an absorbent article wherein a thermal cell actuator is removable from the article or attachable to the article as set forth in the abstract.

As to claim 16, Glaug discloses an absorbent article comprising a liquid impervious backsheet, a liquid pervious topsheet joined to the backsheet, an absorbent core disposed intermediate the topsheet and the backsheet and a thermal cell actuator (64) disposed on or adjacent to at least a portion of the article to effect a change in properties in at least a portion of the absorbent article as set forth in col. 10, lines 58 – 61.

Claims 1 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasse (US 5,591,146).

With respect to claim 1, Hasse discloses an absorbent article comprising a backsheet (26), a liquid pervious topsheet joined to the backsheet (24), an absorbent core disposed intermediate to the topsheet and the backsheet (28), and a phase change material (89) disposed at least on a portion of the article as set forth in figure 2.

As to claim 15, Hasse discloses an absorbent article wherein the phase change material effects an increase in fragrance in the article when the phase change material changes phases as set forth in col. 11, lines 5 – 8.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 7 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glaug and further in view of Salyer (US 5,254,380).

The difference between Glaug and claim 3 is the provision that the phase change material will change from a liquid to a solid or from a solid to a liquid in response to a temperature change in the absorbent article.

Salyer discloses a phase change material will change from a liquid to a solid or from a solid to a liquid in response to a temperature change as set forth in col. 1, lines 20 – 30.

It would have been obvious to one of ordinary skill in the art to substitute the phase change material taught by Salyer for the phase change material disclosed by Glaug because both disclose the use of hydrated salts as phase change materials in medical applications as shown in Glaug (col. 9, lines 45 – 46) and Salyer (col. 4, lines 36 – 37) and Salyer's recognition of a phase change material that will not liquefy upon heating above its melting point and not form a rigid solid below its melting point proves particularly useful for heat transfer efficiency and safety as taught by Salyer in col. 1, lines 46 – 48.

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With reference to claim 7, Salyer discloses the phase change material being selected from the listed group as set forth in col. 4, lines 36 – 65.

With respect to claim 14, Salyer discloses a the phase change material effecting a decrease in malodorous vapors in the article when the phase change material changes phases as set forth in col. 1, lines 24 – 39 and col. 2, lines 5 – 6. It is well known in the art that silica performs as an odor absorber.

### ***Allowable Subject Matter***

Claims 4 – 5 and 12 – 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed July 15, 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a material which will transition from one fast to another such as from the solid to liquid phase) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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The applicant uses the term "phase change material" and according to the originally filed disclosure the phase change material is defined as being capable of adding and removing heat to or from at least a portion of the absorbent article to perform a useful function on the article (page 3, lines 17 – 18). In the current rejection, Glaug provides an article that will add or remove heat from the article to function as a training aid for the wearer, thereby meeting the terms of a "phase change material" as defined by the disclosure.

Likewise, in response to the applicant's arguments that Glaug is patentable over newly presented claim 16, the examiner disagrees. Again, it is noted that the features upon which the applicant relies (i.e., that Glaug does not disclose the use of a temperature change to effect some other change in the properties of a portion of the article) are not recited in the rejected claim. The claim does not require some other change in property. The examiner contends that the temperature change substance of Glaug functions as a thermal cell actuator (because it adds or removes heat from the article) that is disposed on at least a portion of the article and effects a change in properties (temperature) in at least a portion of the article even if that portion affected is the layer itself and not some other portion of the article because some other portion of the article is not required by the claim language.

In response to the applicant's argument that Hasse does not show a phase change material, the examiner disagrees. Hasse discloses a material that encapsulates a fragrance. As the system is manipulated, the microcapsules are released and change



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from one phase (encapsulated) to another phase (diffused) as taught by Hasse in col. 8, lines 16 – 18.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*Michele Kidwell*

Michele Kidwell  
October 16, 2003

  
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